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Insurability and Suicide: *Shariah* Issues in Underwriting

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Abstract

Common suicide clauses preclude protection coverage for insureds who kill themselves during the first few years of exemption. Similar clauses have been adopted by Islamic insurance (*takaful*) companies. Is this just an emulation of what has been practiced by the conventional insurer or is there any basis in Islamic law that supports this practice? This paper attempts to examine the Islamic perspective on the act of suicide and the current practices of the Malaysian *takaful* operators regarding the coverage of this event. The issue is whether it is appropriate for *takaful* operators to exclude the coverage in the event of suicide, as it is established based on mutual help, solidarity and brotherhood. Although suicide is an unacceptable act in Islam, the main concern in the case of the occurrence of this act is the welfare of the next of kin who may have lost their main breadwinner. It was found that, in the past, the act of suicide was not covered by *takaful* operators, and, thus, the beneficiaries are not entitled to claim compensation on the death of the participant due to suicide. However, it is observed that the practice is changing, whereby the trend is that *takaful* operators are allowing the beneficiaries to claim compensation on the participant's death due to suicide albeit after the exemption period. The paper explores the *Shariah* justification deliberated by the *Shariah* committee members of the *takaful* operators in their decision to allow such compensation. The main focus of our examination is whether this practice is allowed in accordance with the purpose of Islamic law (*maqasid al-Shariah*).

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1 Introduction

Takaful is a mutual and solidarity contract that provides help to the participants thereof in the event of hardship. *Takaful* has been established as an alternate financial risk management tool for Muslims to replace insurance, which is prohibited in Islam since it involves Islamically prohibitive elements, such as *riba* (interest), *gharar* (uncertainties) and *maysir* (gambling). The main products of *takaful* are family *takaful*, which is an alternative to the life insurance products, and general *takaful*, which is an alternative to the general insurance products. Generally, *takaful* operators are required to establish a specific body, normally known as the *Shariah* Committee/*Shariah* Advisory Council to ensure that all products and the overall operations are *Shariah* compliant. In Malaysia, the *Takaful* Act 1984 requires all *takaful* operators to establish a *Shariah* Committee as a prerequisite to be granted *atakaful* licence by the Central Bank of Malaysia, better known as Bank Negara Malaysia (BNM). The BNM new *Shariah* Governance Framework of 2011 requires all Islamic financial institutions (IFIs), including *takaful* operators, to establish the above mentioned committee comprising of at least five members. The majority of the members should possess a relevant qualification in Islamic law, while the minority of the members can be appointed from the banking and finance or legal background. The Committee plays a very crucial role in deciding the compliancy of the *takaful* products and their business operations with the *Shariah* principles.

Insurance or *takaful* as a financial risk management tool normally covers all types of pure risk. There are, however, certain events that are not covered, for example, losses that occur non-fortuitously or done intentionally. One such event is suicide of the insured/participant under the life insurance/family *takaful* products. According to Sentell (2008), most life insurance contracts exclude coverage of death by suicide, sane or insane, occurring within a contestable period that is usually fixed at one or two years after the issuance of the policy. Insurance companies and *takaful* operators normally include an "exclusion clause" in the policy/certificate to exclude the coverage on the event of the death of the insured/participant due to suicide. The inclusion of such a clause leads to the failure of the next of kin to claim the compensation on the sum insured upon the death of the insured/participant. The reason for this practice is that, in the past, there have been instances where people buy an insurance policy before committing suicide to ensure that the next of kin is secured financially after their death. Since self-destruction is regarded as being equivalent to the destruction of one's own property with the intent to claim for the insurance benefits, the act of suicide is also regarded as an attempt to deceive the insurance company.

However, in the course of time, the courts have begun to make a distinction between suicides committed with the intent to defraud the insurance company and suicides that resulted from the insanity of the insured. It became a cynical byword in insurance offices that every suicide was insane if he was insured. In fact, one learned judge declared that suicide was *prima facie* evidence of insanity. Hence, it logically followed that an insured who committed suicide was the victim of an illness, and the company of course was liable. When this principle seemed to be firmly established, insurance companies sought to protect themselves by including an "exclusion clause" in the related insurance policies to avoid the possible liability for both 'sane or insane' cases of suicide. However, in response to the public criticism on the issue of fairness, companies generally refunded the portion of premiums paid that had been reserved for the redemption of the policy (Lawton, 1904).

2. Research Methodology

The issue regarding *takaful* and suicide coverage is relatively new and the literature on this issue is scant, hence this study is considered exploratory in nature. Babbie (2002) explains that an exploratory research approach typically occurs when a researcher examines a new interest or when the subject of study is relatively new. In this regard, as a preliminary step, this paper focuses on analysing “exclusion clauses” included in the Product Disclosure Sheet (PDS) for life insurance and family *takaful* products retrieved from the websites of randomly selected insurance companies and *takaful* operators in Malaysia. The relevant information is obtained from the websites of these companies in line with the increasing popularity of websites as a critical medium for stakeholders to gather information about a company (Melewar and Karaosmanoglu, 2006). A content analysis is conducted to ascertain whether or not companies have included the “exclusion clauses”, as well as the detail of these clauses in the PDS provided to their prospective consumers.

The PDS is a document containing relevant information on financial products provided to consumers to assist them in assessing the product suitability and conduct comparative shopping. In recognizing the importance of adequate and effective disclosure to consumers, BNM issued Guidelines on Product Transparency and Disclosure in 2009, which serve to raise the disclosure standards for retail financial products and aim to support informed decision making by consumers through meaningful and timely disclosures. Under this Guideline, financial service providers are required to provide adequate and relevant information that is clear and easy to understand to prospective consumers in the form of the PDS. The PDS should focus on key and relevant information central to factors that will facilitate the decision making of consumers. Amongst the information to be disclosed in the PDS are key features of the product, key terms and conditions, fees and charges, significant risks associated with the product and important notices or warning statements on the financial product.

3. Suicide in Insurance/*Takaful* Policy

3.1 Suicide: A Definition

Suicide means taking one's own life. For the insurance industry, suicide is a voluntary, wilful self-destruction of the insured. According to the World Health Organization (WHO) (<http://www.who.int/topics/suicide/en/>) suicide is the act of deliberately killing oneself. The main reasons for suicide include mental disorder due to mental illnesses, such as depression, personality disorder, alcohol dependence, or schizophrenia, or/and some physical illnesses, such as neurological disorders, cancer, and HIV infection. Possible factors that influence suicide are low frustration tolerance, severe hostility, life expectations and failure, interpersonal conflicts between family members and peers, mental health problems, behavioural problems of alcohol and drug abuse, suffering from diseases, such as HIV/AIDS, and other environmental factors (http://www.searo.who.int/en/Section1174/Section1199/Section1567/Section1824_8080.htm). Mann et al. (2005) state that medical professionals believe that suicide happens due to depression and other psychiatric disorders. In Malaysia, with more than 1,000 people taking their own lives over a three-year period, incidences of suicide are a cause of concern. The Health Minister of Malaysia, Datuk Seri Liow Tiong Lai said that the ratio of suicides from 2007 to 2010 was 1.3 for every 100,000 people, but added that it could be higher (<http://thestar.com.my/news/story.asp?file=/2012/6/5/nation/11415435&sec=nation>).

Sentell (2008) explains that life insurers are reluctant to provide coverage for the death of the insured due to suicide as they believe that they do not have a well-developed ability to predict who

will commit suicide making the underwriting process very complicated. According to him, although studies have identified some risk factors for suicide, the information that is available is very sketchy. The insurer's underwriting task is even more difficult because of the problem of anticipating just when a person might commit suicide, or when he or she might be considered free from the risk of committing suicide. Because insurers cannot identify who will be suicidal, or when a particular person will be suicidal, they have no way in which to refuse to insure suicidal persons. The best interest of the policyholders as a group must be considered. To make no effort to prevent suicidal persons from applying for life insurance to benefit their dependents will clearly be unfair to other policyholders.

Generally, in a life insurance policy a condition against suicide "sane or insane" is uniformly held to be valid and enforceable (n.a, 1927). In such a policy, one also finds a provision that states that if the person covered by the life insurance policy dies as a result of suicide within the first two years from the policy issue date then the beneficiaries are not entitled to claim for the benefit. Thus, if it is proven that the policyholder has committed suicide within the first two (2) years of the policy with the intention of leaving benefits to his beneficiaries, no right of claim shall be entertained.

The clause is a result of research, which concluded that a significant number of insureds, who committed suicide with the aim of procuring compensation, occurred within a short period of time after the execution of the policy (Zevnik, 2004). Ironically, there are also researchers who found that the period of exemption is ineffective to avoid events of compensation motivated suicides. Insurers are still exposed to the risk of adverse selection and moral hazard even after the period of exemption (Chen et al., 2008).

3.2 Suicide Clauses in the Insurance/Takaful Products

We have examined the suicide clauses included in the PDS of selected life insurance/family *takaful* products offered by various insurance companies and *takaful* operators in Malaysia. The extracted clauses are presented in Table 1. It may be concluded that all companies have included an "exclusion clause" to avoid the liability under the death resulting from suicide. The only difference lies in the exempted period allowed, which ranges from one to two years. There are also companies that do not disclose the detail on the exempted period, for example, RHB Personal Insurance and CIMB AVIVA Takaful.

Table 1: Extracts of suicide clauses in insurance/*takaful* products

Insurance/ <i>Takaful</i> Company	Suicide Clause
Manulife Malaysia	A suicide clause is a condition incorporated in the policy to prevent claims from suicides, whether sane or insane, within a fixed period of time from the policy's issue date. In cases like this, the insurer will refund the premiums paid. The fixed period, as mentioned above, ranges from one to two years, depending on the insurer and the type of product purchased. The purpose of this clause is to discourage people with suicidal intentions from buying a policy with the intention of benefiting their families after their planned death.
RHB Personal Insurance	The usual exclusions like pre-existing illness, specified illnesses, hospitalization caused by war, effects of alcohol, self-inflicted injury, suicide or attempted suicide, mental disorder, complications of pregnancy or childbirth, use of non-prescribed drugs and HIV related illnesses. Please refer to policy document for full details.
MAA <i>Takaful</i>	Death from suicide within one (1) year from the commencement date or date of increase in the Sum Covered, whether the Person Covered is sane or insane, shall limit the <i>Takaful</i> Operator's liability to the PIA value on the date of the death.
CIMB AVIVA <i>Takaful</i>	No benefit shall be payable in the death, total permanent disability or injury sustained directly or indirectly wholly or partly caused by suicide or attempted suicide.
<i>Takaful</i> Malaysia Berhad	The coverage of <i>TakafulmyInvest</i> is subject to certain exclusions and limitations, which is death due to suicide while sane or insane within one (1) year from the commencement date.
Prudential BSN <i>Takaful</i>	PruBSN Ummah does not cover the following situations. If any of these happen, the benefits offered under the plan will not be payable to you. If the loss of life occurs as a result of suicide within one year from the start date of coverage; if the loss of life occurs as a result of suicide during <i>Hajj</i> or <i>Umrah</i> for the double <i>Takaful</i> benefit; and if total and permanent disability occurs due to attempted suicide or self-inflicted injury.
Takaful Ikhlas	If the certificate owner or the participant whether sane or insane commits suicide this certificate shall become void. The <i>takaful</i> benefit payable upon death is limited to the participant's share, calculated on the first NAV valuation date following the receipt of the notification of the participant's death by the <i>wakeel</i> .
Etika <i>Takaful</i>	Exclusion of the policy is suicide or attempted suicide, provoked homicide or assault.
AIA AFG <i>Takaful</i>	Death caused by suicide within 1 year from the issue date or commencement date, whichever is later. We will not pay any claim, however, we will refund the contribution paid.

Sources: Websites of selected insurance/*takaful* companies

4. Islamic Law Perspective on Suicide

In a *takaful* company, any decision concerning the entitlement of the benefits stipulated under all *takaful* certificates needs to be tabled to the *Shariah* committee for approval to ensure full compliance with Islamic law. The same applies in the event of the death of a participant due to suicide in any related family *takaful* certificate. In the past, the practice adopted by the *takaful* operators is that no compensation shall be made to the beneficiaries since suicide is prohibited in Islam. In Islam, committing suicide is considered as a major sin and the person committing suicide has to face damnation and the wrath of *Allah* in the Hereafter. Indeed, *Allah* forbids paradise for him. According to the *Quran* there is nothing more precious than life. A believer has no right to take his/her own life. It is stated in the *Quran* that '....And do not kill yourselves (nor kill one another). Surely, *Allah* is Most Merciful to you' (*Surah al-Nisa*, 4:29).

Al-Qurtubi (2006) explains that this verse provides guidance to Muslims on the prohibition of killing others and killing themselves. In *Surah al-Baqarah* (2:195), *Allah* prohibits oneself from destroying one's self, where *Allah* says that '.... and do not throw yourselves with your own hands into destruction. And do good; indeed, *Allah* loves the doers of good'. In *Surah al-An'am* (6: 151) the *Quran* says: 'And slay not the life which *Allah* hath forbidden save with right. This is commanded

unto you by Him so that ye may understand'. Therefore, it may be concluded that from the above mentioned verses, the act of suicide is prohibited for a Muslim and is regarded as a major sin.

For an in depth analysis on this issue it is beneficial to get guidance from another source of Islamic law, i.e. the traditions of the Holy Prophet (peace be upon him), which also support the earlier analysis drawn upon from the *Quran* whereby a person who commits suicide is considered as committing a major sin and renders himself liable for punishment in the Hereafter. So the Holy Prophet said:

".....And if somebody commits suicide with anything in this world, he will be tortured with that very thing on the Day of Resurrection; And if somebody curses a believer, then his sin will be as if he murdered him....."

Suicide is prohibited even in battles, as stated by the Holy Prophet (peace be upon him) in the following *hadith* narrated by Abu Huraira:

We were in the company of Allah's Apostle in a Ghazwa (battle), and he remarked about a man who claimed to be a Muslim, saying, "This (man) is from the people of the (Hell) Fire." When the battle started, the man fought violently till he got wounded. Somebody said, "O Allah's Apostle! The man whom you described as being from the people of the (Hell) Fire fought violently today and died." The Prophet said, "He will go to the (Hell) Fire." Some people were on the point of doubting (the truth of what the Prophet had said) while they were in this state; suddenly someone said that he was still alive but severely wounded. When night fell, he lost patience and committed suicide. The Prophet was informed of that, and he said, "Allah is Greater! I testify that I am Allah's Slave and His Apostle." Then he ordered Bilal to announce amongst the people: "None will enter Paradise but a Muslim, and Allah may support this religion (i.e. Islam) even with a disobedient man."

A companion of Prophet Jundab narrates that the Prophet said,

"A man was inflicted with wounds and he committed suicide, and so Allah said: My slave has caused death on himself hurriedly, so I forbid Paradise for him."

In another *hadith*, narrated by Abu Huraira, the Prophet said,

"He who commits suicide by throttling shall keep on throttling himself in the Hell Fire (forever) and he who commits suicide by stabbing himself shall keep on stabbing himself in the Hell-Fire."

In another *hadith*, also narrated by Abu Huraira, the Prophet said,

"Whoever purposely throws himself from a mountain and kills himself, will be in the (Hell) Fire falling down into it and abiding therein perpetually forever; and whoever drinks poison and kills himself with it, he will be carrying his poison in his hand and drinking it in the (Hell) Fire wherein he will abide eternally forever; and whoever kills himself with an iron weapon, will be carrying that weapon in his hand and stabbing his abdomen with it in the (Hell) Fire wherein he will abide eternally forever."

Overall, the above mentioned *Quranic* verses and *hadith* indicate that the act of committing suicide is considered a major sin in Islam. However, at the same time, even though a Muslim committing suicide is someone who shall be disgraced forever in hell, it is still an obligation of the fellow believers to bury them in accordance with the Islamic traditions as he/she is still considered a Muslim. Similarly, it can be understood that the sin of the person committing suicide should not negate the obligation of a Muslim on another fellow Muslim.

4.1. Maqasidal-Shariah and Suicide

In Islam, the divine texts of the *Quran* and *hadiths* act as guidance to human kind. These texts contain the rulings of Islamic law, which govern the way that Muslims should live their lives. Embodied in these texts are the purposes or objectives behind the rulings of Islamic law known as the *maqasid al-Shariah*. The main objective of the laws is to protect the religion of Islam (*din*), life, lineage, intellect and the wealth of mankind.

In the case of *takaful*, the exemption from the right to receive compensation of the insured who kills himself is basically based on the objective of one of the *maqasid* principles, which is to protect life. Based on the principle of taking precautions (*saddal-zarai*), a *takaful* operator should not pay the compensation to the beneficiaries if the participant commits suicide in order to prevent the act of suicide. However, it is also important to consider the welfare of the beneficiaries who are left behind by those who committed suicide. The beneficiaries may have lost the sole breadwinners of their family. If the beneficiaries are not entitled to claim the stipulated benefits in the event of the death of the participant due to suicide they may be exposed to hardship, especially if the beneficiaries are not capable of earning an income on their own.

The main issue that needs to be considered is whether it is appropriate for *takaful* operators to deny the stipulated benefits under the related *takaful* certificates to be reimbursed to the beneficiaries/bereaved families. It is undeniable that the teaching of Islam prohibits the act of suicide. However, is it proper to penalize the beneficiaries of the deceased by not allowing them to claim the stipulated benefits under the certificates? It is clearly mentioned in the *Quran* that believers would not be held responsible for the sins of others. The *Quran* states, “No soul shall bear the burden of another”. (*Surah Fathir*, 35: 18). If *takaful* operators decide not to pay compensation to the beneficiaries upon the death of a *takaful* participant due to suicide, then the decision is against that which has been stressed in the above mentioned *Quranic* verse. Thus, in Islam, issues of adverse selection and moral hazard involving the suicidal insureds are not a major concern in deciding the provision of compensation to the bereaved families.

Furthermore, the concept of *takaful* itself is mainly geared towards assisting those who befallen with hardship. The fund, which pays for the compensation, originated from the donation (*tabarru'*) fund donated by the insureds to those befallen with hardship or their beneficiaries in cases of death. The fund has never been owned or belonged to *takaful* operators.

5. Conclusion

From the Islamic legal perspective, even though suicide is an act that is condemned, the bereaved families of those who committed suicide are never considered at fault and should not be victimized. As discussed above, the *Quran* states that a believer will never be burdened with the sins of others, only his own. Therefore, we are of an opinion that this *Quranic* verse provides support and justification for *takaful* operators to honour the claim made and reimburse in full the stipulated benefits under the certificate to the beneficiaries of the participant although the participant has committed suicide. The *Shariah* committees of *takaful* companies need to re-evaluate this issue of suicide and reimbursement to the beneficiaries. If they are of the opinion that the act of suicide can be covered for *takaful* participants and full reimbursement is allowed to the beneficiaries, then it is essential for them to come up with some stringent conditions so that the allowable coverage may not

be used by participants as an easy way to obtain compensation for their beneficiaries after their death due to suicide.

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